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SUBPOENAS

A GUIDE TO SUBPOENAS IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

Why would I subpoena someone?

Subpoenas are used if you want a person to testify at your hearing and that person will not voluntarily appear or is unable to appear without a subpoena. If a person is willing to appear, a subpoena is not necessary.

When do I need to issue the subpoena?

You should complete and serve the subpoena as soon as you know your hearing date.

How do I get a subpoena?

Subpoenas for Family Court are available at the Family Court in each county.

The Clerk will give you a signed and sealed subpoena that is otherwise blank. You must obtain a subpoena in the county where the hearing is to be held.

-The cost of a subpoena is \$6, except in Protection From Abuse cases where there is no charge.

Whom can I subpoena?

Any person living within the State of Delaware may be subpoenaed. You may subpoena persons outside of Delaware; however, the Court cannot enforce that subpoena.

- Please note! Issuing a subpoena to a Family Court Mediator is likely to be unsuccessful. All mediations are confidential. Therefore, the mediator cannot testify regarding what was said during your mediation.

How do I fill out the subpoena?

- 1) You must fill in the names of the parties and the petition number.
- 2) Next to the [To:], you must fill in the name and address of the person that you wish to subpoena.
- 3) Fill in the date and time of the hearing and which Hearing Officer is presiding over the hearing. Select whether you want the person to testify, give a deposition or produce documentary evidence. In the blank space below, you can write out more specific details about what evidence you want that person to bring, if any.
- 4) Fill out your name, address and telephone number as the requesting party
- 5) On the bottom of the subpoena, indicate to which Court the person should report.

Will the Court serve my subpoena?

The Court will serve your subpoena for a cost of \$25. However, if you do not want the Court to serve your subpoena, please see the following question.

How do I serve (deliver) the subpoena?

Any person over the age of 18 **who is not a party to the case** may deliver the subpoena.

Delivery must be made directly to the person.

! Before the subpoena is served, review the affidavit of process server located on the back of the yellow page. This must be filled out by the person who delivers the subpoena and requires information about who the subpoena was given to.

What if I can not deliver the subpoena in any of the ways listed above?

If the server cannot, after a diligent search, find the person, have them fill out the Non-Service portion located on the back of the yellow page. If the person is not served with the subpoena, they are not obligated to appear.

What does the person who delivered the subpoena have to do?

The delivery person gives the addressee the top page of the subpoena. Then, they must fill out the back of the yellow page and sign in the presence of a notary. This requires them to list specific information about when, where and whom they served.

What happens after the subpoena is delivered?

The yellow and pink pages are filed with the Court.

What happens if the person subpoenaed does not appear in Court?

Failure of a person to obey a subpoena without an adequate excuse may be deemed a contempt of court. However, the person issuing the subpoena is required to take reasonable steps to avoid imposing an undue burden or expense on that person.

I received a subpoena. Do I have to appear?

The Court will quash (dismiss) a subpoena if it fails to give reasonable time for compliance, requires you to disclose privileged information or subjects you to undue burden. If you believe that one of these applies to you, you must file a Motion to Quash a Subpoena.

- If you do not file a Motion to Quash a Subpoena, the only person who can release you from the subpoena is the person who issued it.